IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1926 OF 2005

Vinod Agarwal.....Petitioner

Versus

Shaheen Apartment Co-op. Housing
Society Ltd. & Ors. .....Respondents

Mr.Gabriel Pillai, for the Petitioner
Mr. V.D. Patil, for Respondent No.1.
Mr. P.G.Sawant, AGP for the respondent Nos. 2 and 3.

CORAM: F.I. REBELLO, J.
DATE 22nd August, 2005

P.C.:

1. Rule. Heard forthwith.

2. It is the case of the petitioner that during the pendency of the proceedings before the Recovery Officer he had deposited a sum of Rs.11,238.79 paise for the period from 1st July, 1998 to 31st May, 2002. The Recovery Officer did not take this into consideration and issued the Recovery Certificate including the amount which was deposited for the period from 1st July, 1998 to 31st May, 2002. The Revision preferred by the petitioner herein was returned on the ground that the 50% of the amount of the recovery certificate had not been deposited. It was the contention of the Revision applicant that the sum of Rs.11,238.79 had to be considered for the purpose of computing the 50% amount which was directed to be deposited. That was rejected by the Revisional Authority.

3. On behalf of the respondent No.1 their learned Counsel points out that the Recovery Officer was within jurisdiction in returning the revision for non-deposit of the 50% amount.It

is submitted that in accordance with law to maintain a revision the petitioner and aggrieved party who has preferred a revision has to deposit 50% of the amount as shown in the certificate. The Revisional authority has jurisdiction in passing the order in question. It is further submitted that the contention of the petitioner that he had paid the amount, by itself is subject matter of the revision application and cannot be considered at this stage of deposit towards the 50% of the dues.

4. Having heard learned Counsel the question is whether the revisional authority was right in demanding 50% of the amount of the certificate. The contention urged on behalf of the petitioner is that the revisional authority in all such cases inspite of parties depositing the amount before the Recovery Officer does not take that into consideration the same whilst demanding 50% of the amount in terms of the recovery certificate. It is submitted that direction should be issued to the Recovery Officer to consider the amount deposited during the pendency of the proceedings or any other amounts paid. Section 154(a)(a) reads as under:-

> "No application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 unless the applicant deposits with the concerned society 50% amount of the total amount of recoverable dues."

The expression, therefore, used is recovery of dues. In other words, the dues which are to be recovered is in terms of the certificate. It is, therefore, clear that if the party

deposits any amount that has not been considered yet the recovery certificate is issued in so far as the revisional authority is concerned, it will be bound by the said recovery certificate. If any other amount is paid after the certificate is issued then that amount can be considered while depositing 50% of the amount towards the recovery certificate. It is not, therefore, possible for the Revisional authority to read into the certificate the amount not considered by the Recovery Officer. That would be subject matter of revision itself. All can can be said is that the Recovery Officer before passing an order to issue certificate is bound to take into consideration all amounts paid which are deposited before him before issuing the recovery certificate. Considering the above and in exercise of the extra ordinary jurisdiction of this Court the following order:-

. The amount already paid by the petitioner herein and which has been admitted to have been paid, but which the respondent No.1 has adjusted towards future amounts considering the application which was filed before the Recovery Officer will be considered as amount paid for the period from 1st July, 1998 to 31st May, 2002. The Revisional Authority to consider the said amount towards 50% deposit and the balance if any paid then to treat the revision as properly filed and hear and dispose of the same on merits. The petitioner has paid additional amount of Rs.5,460.33 by the letter dated 6th October, 2005. That amount along with the sum of Rs.11,438.79 to be calculated for the purpose of considering 50% deposit. If there is still any amount due and payable the Revisional Authority to give a period of 30 days to deposit any outstanding amount and to hear and dispose of

the Revision Application on merits.

. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)